

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RAMON COSME,

Plaintiff,

DECISION AND ORDER

04-CV-6629L

v.

SERGEANT FURMAN, et al.,

Defendants.

On June 17, 2010, the Court issued a Decision and Order (Dkt. #39) in this prisoner civil rights case directing the parties to file additional submissions concerning the issue of whether plaintiff's failure to exhaust his administrative remedies should be excused under the principles set forth in *Hemphill v. New York*, 380 F.3d 680 (2d Cir. 2004). A copy of that Decision and Order is attached as Exhibit A to this Order.

The Court directed the parties no later than July 23, 2010. Defendants filed their response, consisting of a declaration of their attorney with attached exhibits, on July 14, 2010. Dkt. #41.

In a letter to the Court dated August 9, 2010 (Dkt. #42), plaintiff stated that he had received the declaration of defendants' attorney, but that he "was at a loss on when to respond," and he asked to be given until September 3, 2010 to submit a response. The Court granted that request on August 20, 2010.

Plaintiff filed an affirmation on August 27, 2010 (Dkt. #43), stating, *inter alia*, that he “has no knowledge of a June 17, 2010 decision and order of this Court,” and that he has not received any such order. *Id.* ¶¶ 4, 5. Although plaintiff’s affirmation addresses some of the issues raised in defense counsel’s declaration, he has not responded to all of the matters set forth in the Court’s June 17 Decision and Order.


It seems, then, that for whatever reason, plaintiff never received a copy of the Court’s June 17 Decision and Order. That is curious, since the mailing address on record with the Court is the same address as that set forth in defendants’ certificate of service attached to their most recent filing, and it appears that plaintiff received that within a few days after defendants’ papers were mailed to him. In any event, under these circumstances the Court will give plaintiff additional time to respond and address the issues raised in my June 17, 2010 Decision and Order, as set forth in the Conclusion of this Order.

CONCLUSION

Plaintiff’s attention is directed to this Court’s June 17, 2010 Decision and Order, a copy of which is attached hereto as Exhibit A. Plaintiff shall file a response to that Decision and Order no later than October 15, 2010, addressing the issues concerning exhaustion of remedies set forth in the body of that Decision and Order.

In addition, plaintiff is also directed to send a letter to the Court, within one week after his receipt of this Order, acknowledging his receipt of this Order, and stating the date on which it was received by plaintiff.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 14, 2010.